ing Committee, he shall *ipso facto* cease to be a member of the Congress and shall not be entitled to exercise any of the rights of a member."

This article is *in pari materia* with the former article 15(4) of the said Constitution which was dealt with by the Federal Court in *Datuk Pasamanickam & Anor.* v. *Agnes Joseph.*[2] In that case the respondent sought a declaration that the annual general meeting of the Parit Bakar branch of the Malaysian Indian Congress held on March 1979 was unconstitutional and unlawful and therefore ineffective, null and void. The appellants' appeal against the decision was allowed by the Federal Court. Raja Azlan Shah C.J. (Malaya) (as he then was) delivering the judgment of the Court stated at page 95 as follows:

"It is trite law that the relationship between the Malaysian Indian Congress (a registered society under the Societies Act) and its members is based on contract and the terms of the contract as embodied in the Malaysian Indian Congress Constitution will *prima facie* be binding on the parties. Article 15(4) of the said Constitution impliedly forbids members from resorting to court proceedings in matters relating to their rights, obligations, duties and privileges unless and until such matters are first referred to the Central Working Committee. The said article reads as follows: ...

In the present case article 15(4) provides as a first step that reference to the Central Working Committee is a condition precedent before resorting to court proceedings. The effect of this is that a member is not excluded from going to court but must first refer the matter to the domestic forum. It has been held in *Scott* v. *Avery, supra,* that such a clause is legitimate and not contrary to public policy. The effect of the decision is that an agreement that no right of action shall arise by action in the courts unless and until the parties' differences have been settled in some other way, for example by arbitration, is not void as being an ouster of the jurisdiction of the courts. See also 10 *Halsbury's* (4th ed.) 326-327, para. 719."

In the circumstances of the whole case, I found the defendants had made a sufficient case for me to discharge this interim injunction. I therefore made an order in terms of paragraphs (a) and (c) of the defendants' application. Damages, if any, to be assessed by the Registrar. As for costs, in view of further hearing of prayer (b) whereby the defendants had applied to strike out the plaintiff's writ under Order 18 rule 19 Rules of the High Court, I ordered the costs of the present application to be costs in the cause.

Order accordingly.

Solicitors: *D.P. Vijandran Associates; Maikal, Tana & Co.; Shan, Gooi & Huang; V.P. Nathan & Partners.*

KOH YOKE KOON v. MINISTER FOR HOME AFFAIRS, MALAYSIA & ANOR.

[O.C.J. (Edgar Joseph Jr. J.) July 8, 1987]

[Penang – Criminal Application No. 54-3-86]

Administrative Law – Habeas Corpus – Detention of accused in police custody exceeding maximum period for detention – Subsequent Detention Order by Minister for continued detention of accused – Effect of – Whether legal and authorised – Federal Constitution, art. 5(1) – Emergency (Public Order and Prevention of Crime) Ordinance 1969, s. 4(1).

Constitutional Law – Habeas corpus – Detention of accused in police custody exceeding maximum period of detention – Subsequent Detention Order by Minister for continued detention – Violation of Federal Constitution, art. 5(1).

On October 1, 1986 at about 12.20 a.m., acting on information received, the applicant Koh Yoke Koon was arrested by the police at a stall in Jalan Solok, Tangkak, Muar, Johore. The applicant was then remanded in custody under section 117 of the Criminal Procedure Code for 14 days pursuant to an order made by a Magistrate. He was released on October 14, 1986, but on the same day he was re-arrested and detained at Muar police station pending inquiries under section 3. Upon the conclusion of these investigations, the police submitted a report to the Ministry of Home Affairs.

On December 9, 1986, the Deputy Minister for Home Affairs signed the Detention Order under section 4 of the Emergency (Public Order and Prevention of Crime) Ordinance, 1969 authorising the detention of the applicant for a period of two years with effect from December 12, 1986.

The applicant, therefore, challenged the validity of the Detention Order by the Minister and the detention thereunder.

Held, granting the habeas corpus and setting the applicant free: (1) having regard to the provisions of the Ordinance, the requirements therein as to the place of detention even though procedural are mandatory in character and so breaches thereof cannot be condoned;

(2) the applicant's period of detention in police custody at the Muar police station from December 14, 1986, until some time in the morning of December 16, 1986 when he was removed to the Rehabilitation Centre was wholly unauthorised and therefore in violation of Article 5(1) as being otherwise than in accordance with law;

(3) the Detention Order will not operate to salvage the case for the detaining authority for it specificially provided for detention at the Centre for two years from December 12, 1986 and cannot therefore have the effect of rendering legal the applicant's illegal detention at the Muar police station from December 14, 1986 until his removal therefrom on the morning of December 16, 1986;

(4) the detention of the applicant under section 4(1) was not procured by steps all of which were entirely regular nor was the court satisfied that "every step in the process"

which led to such detention was followed with extreme regularity and therefore the court should not allow the imprisonment to continue. To hold to the contrary would in effect mean that the Minister had power to continue the detention of one who is being illegally detained;

(5) the Deputy Minister had unwittingly exceeded the powers conferred upon him by ordering the continued detention of one who was being illegally detained with the result that the Detention Order, even if valid, was not legally effective at the date of the service thereof to allow the detention of the applicant to continue;

(6) the applicant was entitled to be set at liberty.

Per curiam: ". . . in a matter concerning the liberty of the subject – always a priceless asset – the court should walk very warily, preferring to interpret words and phrases in their ordinary and natural meaning than to embark on inferences or speculations about such a power."

Cases referred to:

(1) *Lau Lek Eng & Ors.* v. *The Minister of Home Affairs, Singapore & Anor.* [1972] 2 M.L.J. 4.
(2) *Re Tan Boon Liat* [1977] 2 M.L.J. 108, 114.
(3) *Re Datuk James Wong Kin Min* [1976] 2 M.L.J. 245.
(4) *The Reverend Thomas Pelham Dalé's case* (1880-1881) 6 Q.B.D. 376.
(5) *Bowditch* v. *Balchin* (1850) 5 Ex. 378; 155 E.R. 165.
(6) *Barnard* v. *Gorman* [1941] A.C. 378, 393.
(7) *Andrew s/o Thamboosamy* v. *Supt. of Pudu Prisons* [1976] 2 M.L.J. 156, 158.
(8) *Karam Singh* v. *Menteri Hal Ehwal Dalam Negeri, Malaysia* [1969] 2 M.L.J. 129.

CRIMINAL APPLICATION.

Christopher Fernando for the applicant.

Mohamed Bazain (Federal Counsel) for the Minister of Home Affairs, Malaysia and Superintendent Pusat Pemulihan Akhlak, Pulau Pinang.

Cur. Adv. Vult.

Edgar Joseph Jr. J.: Koh Yoke Koon, the applicant herein, challenges both the validity of a Detention Order dated December 9, 1986, passed against him pursuant to the provisions of section 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance, 1969 ("the Ordinance") and his detention thereunder.

The foundation documents in the case merit reproduction in full.

The Detention Order, being Ex. AGY 5 to Encl. 12, provided as follows:

"That I, being satisfied that this Order is necessary to be imposed on the person named below with a view to preventing him from committing any acts that may be prejudicial to public order or for the suppression of violence or for the prevention of crimes involving violence.

NAME	*NRIC NO.*
KOH YOKE KOON	A 0555693

By reason whereof and in exercising the powers conferred on me pursuant to Section 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance, 1969, I hereby by this Order order that the person abovenamed be detained for two years from the 12th day of December 1986 at the Rehabilitation Centre, Pulau Jerejak or at any other place that may be ordered by me from time to time.

Signed on the 9th day of December 1986.

sgd.
Dato' Megat Junid Bin Megat Ayob"

The reason for the issue of the Detention Order (Ex. AGY 3 – Encl. 12) was as follows:

"That you are a member of a secret society which commits violent criminal acts and your actions have threatened public order."

The allegations of fact upon which the Detention Order was based ("the allegations of fact") being Ex. AGY 4 to Encl. 12 were as follows:

1. That you are a member of a secret society known as "WAH KEE" which has actively operated in the town of Tangkak, Muar, Johor since 1984.

2. That you together with several of your friends on the 26.11.1984 at about 10.30 at night, whilst armed with parang and wood, attacked 3 male Chinese at Jalan Ong Siong, Tangkak, Muar, Johore.

3. That you together with your friends in early 1983 assaulted a Chinese youth because he refused to be a member of your society.

4. That you together with your friends on 24.6.1986 at about 10.15 at night attacked a male Chinese and his friend with a crash helmet at Jalan Solok, Tangkak, Muar, Johore.

5. That you together with your friends in the month of July 1986, at Jalan Tangkak, Muar, assaulted a male Chinese with a crash helmet and also collided into another male Chinese.

6. That you together with several of your friends on 28.9.1986, at about 11.00 at night at an eating stall at New Village I, Tangkak, attacked a male Chinese where the victim sustained a laceration on his head and abrasions over several parts of his body.

All references in this judgment to sections shall, unless the context otherwise requires, be to the Ordinance.

The essential facts may be stated briefly thus:

On October 1, 1986, at about 12.20 a.m., acting on information received in connection with Tangkak Police Report 1999/86, being Ex. AGY 1 to Encl. 12, the applicant was arrested by the police at a stall in Jalan Solok, Tangkak, Muar, Johore. The applicant was then remanded in custody under section 117 of the Criminal Procedure Code for 14 days pursuant to an order made by a Magistrate. He was released on October 14, 1986, but, on the same day, he was re-arrested by D.P.C. Basri bin Mohd. Amin, detained at Muar police station pending enquiries under section 3 and a copy of the reasons for arrest, being Ex. AGY 3 to Encl. 12, served upon him. Upon the conclusion of these investigations, the police submitted a report to the Ministry of Home Affairs.

On December 9, 1986 the Deputy Minister for Home Affairs signed the Detention Order under section 4, being Ex. AGY 5 to Encl. 12, authorising the detention of the applicant for a period of two years with effect from December 12, 1986 at the Pulau Jerejak Rehabilitation Centre. However, the Detention Order, annexed to which was Borang 1, being Ex. AGY 4 to Encl. 12, was served upon the applicant by Inspector Baldev Singh and Inspector Anwar Shahruddin Abdullah only on December 14, 1986 at No. 11 Jalan Solok, Tangkak, Muar. Nevertheless, this delay was, in my opinion, satisfactorily explained by Inspector Abdul Ghoffor in his affidavit affirmed to on March 30, 1987.

The applicant was, at the time of the service of the Detention Order, informed by one Detective Sergeant 30180 Ng Thin Hong, in the Hokkien dialect, of his right to make representations to the Advisory Board and furnished with a copy each of the reasons for the issue of the Detention Order and the allegations of fact in accordance with section 5(2). Two days later – that is to say on the morning of December 16, 1986 the applicant was escorted to the Pulau Jerejak Rehabilitation Centre ("the Centre").

It was strongly argued by Mr. Fernando, counsel for the applicant, that the maximum period for detention pending enquiries under section 3(3) was 60 days and that in the present case that period had expired on October 13, 1986 but yet the applicant had been detained at the Muar police station until some time in the morning of October 16, 1986 when he was removed to the Centre pursuant to the Detention Order dated December 9, 1986 which, although it came into force on December 12, 1986, had authorised detention under section 4 for a period of two years *at the Centre* and nowhere else.

Upon these facts, the first question as regards this part of the case is: by what authority was the applicant being detained at the *Muar police station* from December 14, 1986 until some time in the morning of December 16, 1986 when he was removed to the Centre.

In reply to this question, the learned Federal Counsel, Encik Mohd. Bazain, submitted that the Detention Order supplied the necessary authority for that. He contended that the place of detention designated in the Order was not important so long as the period of detention was lawful. In support, he cited the case of *Lau Lek Eng & 7 Ors.* v. *The Minister of Home Affairs, Singapore & Anor.*[1] which decided, *inter alia,* that habeas corpus is not an available remedy where the complaint relates to the manner and conditions of detention. I do not consider this authority of any assistance as the complaint here is not as to the manner or conditions of detention but as to the place of detention.

The provisions of the Ordinance, so far as material to the question for decision, are as follows:

"3. (3) Any person arrested and detained under this section may be detained in police custody for a period *not exceeding sixty-days* without an order of detention having been made in respect of him under section 4(1):

Provided that –

(a) he shall not be detained for more than twenty-four hours except with the authority of a police officer of or above the rank of Inspector;

(b) he shall not be detained for more than forty-eight hours except with the authority of a police officer of or above the rank of Assistant Superintendent;

(c) he shall not be detained for more than thirty days unless a police officer of or above the rank of Deputy Superintendent has reported the circumstances of the arrest and detention to the Inspector-General of Police or to a police officer designated by the Inspector-General in that behalf and the Inspector-General or the police officer so designated by him, as the case may be, shall forthwith report the same to the Minister."

"3. (5) Any person *detained under the powers* conferred by this section shall be deemed to be in lawful custody, and may be detained in *any prison, or in any police station,* or *in any other similar place* authorised generally or specially by the Minister."

(Emphasis added)

"4. (2) Every person detained in pursuance of a detention order *shall* be detained in *such place as the Minister may direct* and in accordance with instructions issued by the Minister and any rules made under sub-section (3)."

"4. (3) The Minister may by rules provide for –

(a) the maintenance and management of any place referred to in sub-section (2); . . . "

(Emphasis added)

Furthermore, if it is proposed to remove a detinu from any place of detention to another place of detention section 12(1) requires the necessary Order for removal from the Minister.

Specifically, it reads:

"12. (1) The Minister may by order direct *the removal from any place of detention to another place of detention* to be specified in such order of any person detained in pursuance of the provisions of section 4, to be there detained for the whole or any part or parts of such period for which it has been ordered that such person shall be detained."

(Emphasis added)

In order to ensure the legality of the custody of the detinu during the period of transit from any place of detention to another, section 12(2) reads:

"Any person in course of removal under the provisions of sub-section (1) shall be *deemed* to be in lawful custody".

(Emphasis added).

Having regard to the provisions of the Ordinance aforesaid, I was satisfied that the requirements therein as to the place of detention even though procedural are mandatory in character and so breaches thereof cannot be condoned. To quote Ong Hock Sim F.J. in *Re Tan Boon Liat*[2]:

". . . there are mandatory rules, even of procedure, which cannot be passed over lightly as irregularities, because they are incurably illegal as being in contravention of strictly imperative provisions".

And, in the same case, this is what Lee Hun Hoe C.J. (Borneo) said:

"For myself I find it difficult to see how our Article 5 could be interpreted to exclude the question of procedure even though there is no mention of procedure. The exclusion of procedure is merely an inference drawn from the remarks of Suffian F.J. in *Karam Singh's* case [1969] 1 M.L.J. 129. He was merely pointing out the difference in the wordings of the Indian Constitution and our Constitution. He did not say that procedure was not part of the law. I am inclined to agree with Encik Karpal Singh's contention that the expression "in accordance with law" in Article 5 of our Constitution is wide enough to cover procedure as well. Here the point is not whether the question of procedure is more important under our Constitution than under the other. If the expression "in accordance with law" were to be construed as to exclude procedure than it would make nonsense of Article 5.

Now, the maximum permissible period of detention in police custody is sixty days (section 3(3)) and so long as this period is not exceeded the person detained shall be deemed to be in lawful custody (section 3(5)). But, where, as here, the period of detention in police custody has exceeded the maximum permissible period of 60 days (which ended on December 13, 1986) the deeming provision in section 3(5) does not bite. The result is that the applicant's period of detention in police custody at the Muar police station from December 14, 1986 until some time in the morning of December 16, 1986 when he was removed to the Centre was wholly unauthorised and therefore in in violation of Article 5(1) as being otherwise than in accordance with law.

The Detention Order will not operate to salvage the case for the detaining authority for it specifically provided for detention *at the Centre* for two years from December 12, 1986 and cannot therefore have the effect of rendering legal the applicant's illegal detention *at the Muar police station* from December 14, 1986 until his removal therefrom on the morning of December 16, 1986.

The next question was whether the continued detention of the applicant at the Centre was legal.

It is not difficult to cite an anthology of cases for the proposition that in a matter of deprivation of liberty strict compliance with the law is necessary. My choice of cases is as follows:

In *Re Datuk James Wong Kin Min*[3], Lee Hun Hoe C.J. (Borneo), speaking for the Federal Court which upheld the release of one detained in West Malaysia, under an order found to be valid only in Sarawak, said:

"In a matter so fundamental and important as the liberty of the subject, strict compliance with statutory requirements must be observed in depriving a person of his liberty. The material provisions of the law authorising detention without trial must be strictly construed and safeguards which the law deliberately provides for the protection of any citizen must be liberally interpreted. Where the detention cannot be held to be in accordance with the procedure established by the law, the detention is bad and the person detained is entitled to be released forthwith. Where personal liberty is concerned an applicant in applying for a writ of habeas corpus is entitled to avail himself of any technical defects which may invalidate the order which deprives him of his liberty . . . An inherent part of their (the courts') function is to see that the executive acts within the law and does not encroach unnecessarily into the realm of liberty of the subject. . . If this constitutional guarantee (of article 5(1)) is to have any real meaning at all, then it is imperative that the courts should intervene whenever the liberty of the subject is encroached upon not in accordance with the law."

In the *Reverend Thomas Pelham Dale's* case[4] Brett L.J. said:

"Then comes the question upon the habeas corpus. It is a general rule, which has always been acted upon by the Courts of England, that if any person procures the imprisonment of another he must take care to do so by steps, *all* of which are entirely regular, and that if he fails to follow *every step* in the process with extreme regularity the court *will not allow the imprisonment to continue.*"

(Emphasis added).

And this is what Cotton L.J. said at pages 469, 470:

"I quite agree with Brett L.J. that when persons take upon themselves to cause another to be imprisoned, they *must strictly follow the powers* under which they are assuming to act, and if they do not, the person imprisoned may be discharged, although the particulars in which they have failed to follow those powers may be *matters of mere form.*"

(Emphasis added.)

In *Re Tan Boon Liat*[2] (*ibid*) at pages 110, 111, Lee Hun Hoe C.J. (Borneo) quoted the above passages in the judgments of Brett and Cotton L.JJ. with approval.

In the particular circumstances of the present case and, for the reasons stated, I am satisfied that the detention of the applicant under section 4(1) was not procured by steps "all of which were entirely regular" nor was I satisfied that "every step in the process" which led to such detention was followed with extreme regularity" and therefore the Court should "not allow the imprisonment to continue."

I would add that to hold to the contrary would, in effect, mean that the Minister has the power to continue the detention of one who is being illegally detained. I cannot conceive that Parliament could have intended to confer upon the Minister such a draconian power in the absence of explicit statutory provision. In other words, in a matter concerning the liberty of the subject – always a priceless asset – the Court should walk very warily, preferring to interpret words and phrases in their ordinary and natural meaning than to embark on inferences or speculations about such a power. I am fortified in this by the following *dictum* of Pollock C.B. in *Bowditch* v. *Balchin*[7] cited with approval by Lord Wright in *Barnard* v. *Gorman*[6]: "In a case in which the liberty of the subject is concerned, we cannot go beyond the natural construction of the statute."

It is true that a perusal of section 4(1) shows that the Minister is empowered to detain *any person* for a period not exceeding two years if he is satisfied as to the conditions precedent laid down therein. Whilst the words "any person" are not defined in the Ordinance I am inclined to hold that they include one who is being detained pending enquiries in accordance with the provision of section 3(1) or one who is at large; they cannot, however, be given an extended meaning to include one who is being illegally detained for otherwise it would amount to the eclipse of a fundamental right guaranteed under Article 5(1) of the Constitution, the disproportionate accumulation of power in one sphere and a negation of justice. I would add that any ambiguity in this regard would have to be resolved in favour of the subject since habeas corpus is not a discretionary remedy. I am supported in this by the judgment of Suffian L.P. in *Andrew s/o Thamboosamy* v. *Supt. of Pudu Prisons*[7] when he said:

". . . we agree that any form of detention does violence to section 5(1) of the Constitution. . . and hence power given by law to detain must be construed *strictly* and in case of *doubt or ambiguity* the court should lean in favour of the subject." (Emphasis added.)

His Lordship, however, added:

". . . if the Government exercises a *power conferred on it by Parliament and keeps within the law,* then the duty of the court is quite clear; the court should simply apply the law, no matter how harsh its effect may be on the (individual affected). His remedy is then not judicial but political and administrative."

(Emphasis added)

In all the circumstances, the conclusion at which I had arrived was that Deputy Minister had, no doubt, unwittingly exceeded the powers conferred upon him, by ordering the continued detention of one who was being illegally detained with the result that the Detention Order, even if valid, was not legally effective at the date of the service thereof to allow the detention of the applicant to continue.

Accordingly, on this ground alone, the applicant was entitled to be set at liberty and I so ordered. In view of this, it is unnecessary for me to rule on the various other submissions advanced on behalf of the applicant though, I did remark, in the course of the argument, that having regard to the decision of the Federal Court in *Karam Singh* v. *Menteri Hal Ehwal Dalam Negeri, Malaysia*[8], it was not open to me to consider either the question whether there was reasonable cause to make the Detention Order or the protestations of innocence of the applicant.

In the result, I made a formal order granting *habeas corpus* and setting the applicant free.

Order accordingly.

Solicitors: *Gunaretnam & Co.*

LIM KIT SIANG v. UNITED ENGINEERS (M) BHD. & 3 ORS. (No. 2)

[O.C.J. (V.C. George J.) October 5, 1987]

[Kuala Lumpur – Civil Suit No. D3-21-11-87]

Civil Procedure – Interlocutory injunction – Setting aside – Application for – Locus standi – Whether plaintiff has locus standi – Whether defendants have locus standi – Merits of application.

Civil Procedure – Statement of claim – Frivolous and vexatious – No reasonable cause of action – Striking out – Application for – Locus standi – Merits of application – R.H.C. 1980, O.18 r.19.

Civil Procedure – Injunction – Public interest litigation – Meaningful undertaking – Whether required to be given.

Sometime in December 1986, the first defendant United Engineers (M) Berhad ("UEM") was given what is known as a Letter of Intent by the Ministry of Works under the hand of the Minister of Works, the third defendant, indicating that the Government of Malaysia, the fourth defendant, was prepared to enter into a contract with UEM in respect of the construction and maintenance of certain roads.

The plaintiff who is a member of Parliament and the leader of the Opposition in Dewan Rakyat claimed that UEM was a company owned and controlled by another company called Hatibudi Sdn. Bhd., which in turn was owned and controlled by UMNO. The UMNO leaders allegedly involved in the present case were the Prime Minister, the Deputy Prime Minister, the Minister of Finance and the Minister of Agriculture.

The crux of the plaintiff's complaint was that: (i) the Prime Minister, the Deputy Prime Minister, the Minister of Finance and the Minister of Agriculture, being leaders of UMNO, taking part in the deliberations of the Cabinet that considered the proposal by UEM (in which UMNO had a substantial interest) in respect of the privatisation of the Highways that resulted in the Cabinet deciding to proceed with the privatisation of the Highways amounted to their being guilty of an offence under section 2 of the Emergency (Essential Powers) Ordinance No. 22 of 1970; (ii) the Minister of Finance, being a leader of UMNO and a trustee of Hatibudi Sdn. Bhd., his being authorised to do so and approving the award of the Letter of Intent in favour of UEM, ran foul of the same section 2; (iii) the Minister of Works who, after his Ministry had evaluated the tenders, approved the award was biased in favour of UEM; and (iv) that the tender exercise by which the contract was awarded to UEM was not carried out fairly.

Having filed the action in the High Court at Penang and before serving the writ on any of the defendants, the plaintiff took out an *ex parte* summons seeking an interlocutory injunction to preserve the *status quo*. He wanted the court to restrain UEM from entering into the contract pending the final determination of the suit. Although the application was made *ex parte*, the State Legal Adviser appeared for the second, third and fourth defendants. The application was dismissed by the learned judge. The plaintiff appealed to the Supreme Court. The Supreme Court allowed the appeal. At the hearing of the appeal, all the defendants as well as the plaintiffs were represented by counsel.

Thereafter UEM took out an application seeking, *inter alia*, to have the injunction granted by the High Court set aside, to have the suit struck out on the ground that it discloses no reasonable cause of action against UEM or on the ground that it is frivolous or vexatious or an abuse of the process of court and, alternatively, for the court to exercise its inherent jurisdiction to have the suit (or UEM as a defendant) struck out on the ground that it is a suit not maintainable in law or on the ground that the plaintiff had no *locus standi* to prosecute the suit.

The Minister for Works and the Finance Minister have also filed an application to have the suit against them struck out on grounds similar to those relied on by UEM in their application. The Ministers also invoked Order 15 rule 6(2) of the Rules of the High Court, 1980 and asked that they and each of them be struck out from being defendants on the grounds that they and each of them have been improperly or unnecessarily made defendants in that the statement of claim discloses no reasonable cause of action against either of them.

The Government of Malaysia also sought to have the suit against it struck out on similar grounds.

The applications of UEM, the two Ministers and the Government of Malaysia were heard together.

A preliminary point was also raised by the counsel for the plaintiff as to whether the present court had jurisdiction to entertain an application to set aside the injunction that was granted by the Supreme Court.

Held: (1) while it is not open for the present court to question the exercise of discretion on the part of the Supreme Court when they allowed the appeal from Penang and provided the injunctive relief to the plaintiff, there was no question that the present court had the jurisdiction to consider the application by the defendants. The application does not call for this court to consider the validity of the orders made by the Supreme Court. It is an application for the court to decide after hearing all the parties whether the provisional injunction that was given on an *ex parte* basis should remain or be set aside;

(2) the obtaining of an *ex parte* injunction was a result of one procedure and the hearing of the application whether the injunction should stay is another and different procedure. In hearing the application to set aside, the present court was not rehearing the *ex parte* application; neither was it hearing an appeal from the orders made by the Supreme Court;

(3) on the facts of the present case, the plaintiff had *locus standi* to bring this suit;